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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 12th November 2024

S.R.O. No. 604/2024—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th October 2024 passed in the I.D. Case No. 31 of 2022 by the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Hi-Tech Medical College & Hospital (under Vigyan Bharati Charitable Trust), At Health Park, Pandra, Bhubaneswar, PIN-751025, Dist. Khurda and Shri Rajesh Kumar Mohanty, At Raghunath Bhawan, Narendrakona, Puri was referred to for adjudication is hereby published as in the schedule below:—

SCHEDULE

BEFORE THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 31 of 2022

Dated the 19th October 2024

Present :

Shri Benudhar Patra, LL.M.,
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Management of —
M/s Hi-Tech Medical College & Hospital
(under Vigyan Bharati Charitable Trust),
At Health Park, Pandra, Bhubaneswar,
PIN-751025, Dist. Khurda. . . For the First Party—Management

And

Shri Rajesh Kumar Mohanty, . . For the Second Party—Workman
At Raghunath Bhawan,
Narendrakona, Puri.

Appearances :

Shri D. C. Mohanty, Advocate	. . For the First Party—Management
Shri Sushanta Dash, Advocate	. . For the Second Party—Workman

AWARD

The Labour & E.S.I. Department of Government of Odisha, having satisfied that there exists an industrial dispute between the above named parties, have referred the following schedule of dispute for adjudication by this Tribunal vide Order No. 3670—LESI-IR-ID-0088/2022-LESI, dated the 16th December 2021 read with Addendum No. 3939, dated the 20th May 2022 :

SCHEDULE

"Whether the action of the management of M/s Hi-Tech Medical College & Hospital, Bhubaneswar in terminating the service of Shri Rajesh Kumar Mohanty, Administrative Manager with effect from the 1st October 2020 is legal and/or justified ? If not, what relief he is entitled to ?"

2. Pursuant to the above schedule, the second party filed his claim statement stating, *inter alia*, that the first party involved herein is a multidisciplinary institute offering various services for patient diagnosis and patient care having high standard clinical care and is a Private Medical College associated with Teaching Hospital. The second party had got an opportunity to work under the first party with effect from the 2nd February 2000 where he discharged his duties to the best of his ability under the direct control and supervision of the managing authorities continuously till the 28th September 2020. It is stated that for its own convenience the first party designated him as Administrative Manager and was paying him a monthly salary of Rs.19,600 but practically it had not issued any letter to that effect. Elaborating his stand on the score, it is stated in the claim statement that neither his dominant nature of duties was managerial nor did he exercise any supervisory power while being designated as Administrative Manager and all along he used to discharge the duties which were of manual, clerical and operational in nature and that too under the direct supervision of the superior authorities of local as well as Head Office and the said authorities used to supervise his work on regular basis and he used to submit reports to them as and when required by the Heads of Accounts; Finance and Administration. The second party alleges that while working as such, all of a sudden on the 28th September 2020 the Head-Accounts and Finance issued a letter asking him to go on long leave with effect from the 1st October 2020 on purported ground of COVID-19 situation and was asked to settle his dues in the Accounts and Finance Section at Bhubaneswar. According to the second party, such action of the first party amounts to termination of his service as there is no specific period for which he was asked to go on leave, besides it also amounts to unfair labour practice being in contravention of the provisions of the Industrial Disputes Act,1947 (for short 'the Act'). Specifically it has been averred in the claim statement that as the second party had rendered continuous and uninterrupted service for more

than 20 years under the first party and in the process he had completed more than 240 days of continuous service preceding the date of his illegal termination of service, the action of the first party in terminating his service with effect from the 1st October 2020 is unsustainable in the eye of law and owing to his not gainfully employed elsewhere after the illegal termination, he is entitled to the relief of reinstatement and full back wages with all consequential service benefits.

3. The first party entered appearance in the dispute and filed its written statement. Challenging the status of the second party, it is stated in the written statement that the second party was mainly employed in managerial and administrative/supervisory capacity and was drawing more than Rs. 10,000 per month therefore, he cannot be held to be a 'workman' within the meaning of Section 2(s) of the Act. Disputing the averment of the second party that he was appointed on the 2nd February 2000, the first party has taken the plea that during continuance of the second party under it at Puri Branch, it came to the notice of the first party that the second party was involved in multiple criminal activities, inasmuch as, on the 24th June 2020 one Mahendra Kumar Senapati lodged an FIR against the second party at Kumbharpada Police Station for offences under Section 386/387/120-B/420/427/34 IPC and 25/27 of Arms Act and consequently due to frequent visit of Police, the management was in an embarrassing situation and with a view to avoid such activities the second party was advised to join at Bhubaneswar. But, as the second party did not agree he was directed to go on long leave vide letter dated the 28th September 2020. It has specifically been pleaded that the second party was never terminated from service, rather when he was advised to join at Bhubaneswar he did not carry out the orders and remain silent and thus has voluntarily abandoned his employment. It is stated that the second party being an educated person is employed somewhere and is earning his livelihood. With the aforesaid assertion, the first party claims rejection of the prayer of the second party in the present proceeding.

4. A rejoinder to the written statement has been filed by the second party wherein it is pleaded that initially the second party was appointed to work under M/s Hi-Tech Estates & Promoters Pvt. Ltd., Saheed Nagar, Bhubaneswar on the 2nd February 2000 and thereafter his incumbency was shifted to Puri Branch of the first party i.e. Hi- Tech Medical College & Hospital (belonging to the said Hi-Tech Group) in the year 2015 where he worked continuously till the date of his alleged termination. Reiterating the earlier stand, it has also been pleaded in the rejoinder that the principal nature of duties of the second party was to prepare manual reports of day to day work and submit reports to the Head-Accounts & Finance and Head of Administration, his higher authorities though he was incidentally doing other types of work and therefore it is wrong to assume that he was discharging managerial or administrative works. It is his consistent stand that as a Clerk he had no authority to take any independent decision on behalf of the company and as such, he is coming within the purview of 'workman' as defined under Section 2(s) of the Act. Disputing the averments of the first party that the second party was involved in multiple criminal activities, it is explained that he was falsely implicated in the criminal case (G.R.Case No.1708 of 2020 corresponding to Kumbharpada P.S.Case No.157 of 2020) arising out of a civil dispute of the company with a private person namely Mahendra Senapati, for which the second party approached the Hon'ble Court seeking anticipatory bail and pursuant to the orders dated the 6th April 2022 passed by the Hon'ble Court, the learned S.D.J.M., Puri released him on bail and trial of the said case is still pending. The plea of the first party that for the above reason police frequently visited the premises of the first party and as a result thereof the management was in an embarrassing situation and that to avoid

such situation the first party advised the second party to join at Bhubaneswar are denied to be false, concocted and afterthought. Rather, it is averred in the rejoinder that the second party was asked to settle his dues in the Accounts and Finance Section at Bhubaneswar for being terminated.

5. Basing on the pleadings of the parties, the following issues have been settled for determination :—

ISSUES

(i) Is the reference maintainable ?

(ii) Is Shri Rajesh Kumar Mohanty a 'workman' as defined under Section 2(s) of the I.D. Act,1947 ?

(iii) Is the action of the Management of M/s Hi-Tech Medical College & Hospital, Bhubaneswar in terminating the service of Shri Rajesh Kumar Mohanty, Administrative Manager with effect from the 1st October 2020 is legal and/or justified ?

(iv) If not, what relief the workman Shri Mohanty is entitled to ?

6. In order to substantiate their respective stand, both parties have adduced oral as well as documentary evidence. While the second party examined himself as W.W. 1 and placed reliance on documents marked Ext. 1 to Ext. 4, the first party examined its HR Head as M.W. 1 and placed reliance on Ext. A and Ext. B.

FINDINGS

7. *Issue Nos. (i) and (ii)*—These two issue are taken-up simultaneously for consideration for the sake of convenience, as the first party has challenged the maintainability of the reference on the sole ground that the second party is not a 'workman' within the meaning of Section 2(s) of the Act.

Learned Advocate representing the first party argued with vehemence that in view of the specific stand of the first party coupled with the clear-cut admission of the second party in his cross-examination that he was functioning as Administrative Manager under the first party and was getting remuneration more than the one prescribed under the Act, the reference of the dispute is not maintainable; the reason being second party is not a 'workman' covered under the definition of Section 2 (s) of the Act. Assailing the submission, it is contended by the learned counsel representing the second party that designation assigned to a person and remuneration received by him are not the factors to be considered and it is the nature of duties which should be taken into consideration while determining the status of a person to be a 'workman' or not under the Act. He went on to argue that it being the consistent stand of the second party that despite his designation as Administrative Manager he was discharging manual/clerical nature of duties under the supervision of his superior officers and in that regard the first party has failed to substantiate its plea that the second party having been posted at its Puri Branch was discharging managerial nature of duties, he should be held to be a 'workman' within the meaning of Section 2(s) of the Act. To buttress his argument, learned counsel has cited two decisions of the Hon'ble Supreme Court

in the case of S.K. Maini *Vs.* M/s Carona Sahu Company limited and others (1994) 3 SCC 510 and Devinder Singh *Vs.* Municipal Council, Sanaur, reported in (2011) 6 SCC 584 and a decision of our own Hon'ble High Court in the case of Hotel Hans Coco Palms *Vs.* Milan Das, reported in MANU/OR/0243/2012.

8. The rival contentions of the parties on the issues lead this Tribunal to examine first the statutory meaning of 'workman' as described under Section 2(s) of the Act and so also the dictums of the Hon'ble Courts on the point . Section 2(s) which defines 'workman' reads as under :—

> Section 2(s) : "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, sales promotion, operational, clerical or supervisory or any work for promotion of sales for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person —
>
> (i) " who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
> (ii) who is employed in the police service or as an officer or other employee of a prison; or
> (iii) who is employed mainly in a managerial or administrative capacity ; or
> (iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercise, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

Now coming to the guidelines propounded by the Hon'ble Apex Court, it is found that in the case of S.K.Maini *(supra)* the Hon'ble Apex Court considering the legislative intention behind the definition of 'workman' have held that whether or not an employee is a workman under Section 2(s) of the Industrial Disputes Act, is required to be determined with reference to his principal nature of duties and functions and such question is required to be determined with reference to the facts and circumstances of the case and materials on record and it is not possible to lay down any strait-jacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. Further it has been held by the Hon'ble Apex Court in the case of Devinder Singh *(supra)* that the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. Further, our own Hon'ble High Court in the case of Hotel Hans Coco Palms*(supra)* have held in Para.10 of the judgment that "A subtle difference has to be kept in mind, the management denies the very assertion that the person concerned was an employee of the management, then the onus is on the workman to prove the same. But, once it is admitted that a person was an employee and was working in the capacity as a workman, but he was given promotion and as such he became a part of the management, then the onus shifts to the management to prove that the employee was not a workman within the definition of Section 2(s) of the Act. xxxxx."

9. In the case in hand, the second party seems to have taken a consistent plea not only in his complaint before the labour authority but also in his pleadings as well as in evidence that despite being designated as Administrative Manager, he was discharging manual, clerical and operational nature of duties as per the instructions of his superior authorities from time to time and he was not bestowed with any independent authority to hire, transfer, suspend, lay off, recall, promote, discharge or to recommend disciplinary action against any employee. In course of hearing save and except putting some suggestions to the second party (WW1) that he was the Administrative Manager of the first party at its Puri Branch and was drawing a salary of Rs.19,600 the first party did not produce any documents showing the nature of duties assigned to the second party, rather it is found admitted by MW 1 in his cross-examination at Para.15 that no document in support of the functions of the second party in the capacity as manager is filed by the management before this Tribunal. In view of the principles laid down by the Hon'ble Court, it is the management who should have produced convincing evidence to the satisfaction of the Tribunal that the second party being the Administrative Manager was assigned with job responsibilities which were in the nature of managerial/supervisory duties. Even the first party has failed to place on record the letter of appointment of the second party which could have thrown light on the terms and conditions of appointment of the second party. The nature of duties of a person, and not the designation or remuneration, being the paramount consideration to arrive at a conclusion on the point, the management ought to have placed sufficient evidence on record to establish the managerial functions of the second party, the absence whereof constrains this Tribunal to hold that the management has miserably failed to establish its stand that the second party is not a 'workman' coming within the purview of Section 2(s) of the Act and therefore, the reference of the dispute is not maintainable before this Forum.

In the result, Issue Nos.(i) and (ii) are answered in favour of the second party.

10. *Issue No. (iii)*–This issue pertains to the legality and justifiability of the action of the first party in terminating the services of the second party w.e.f. the 1st October 2020. In the context, the learned counsel for the second party places reliance on Ext. 3, dated the 28th September 2020 and contends that in the letter under reference though the first party instructed the second party to go on long leave w.e.f. the 1st October 2020 in the wake of COVID -19 with a further advice to settle his dues, the same amounts to termination of his service, as because the management without taking into consideration his long rendition of service under it straight away took such an action in gross violation of the provisions of the Act. The learned Advocate for the management, on the other hand, drew attention of the Tribunal to Ext. A, the copy of FIR, dated the 24th June 2020 and argued that as the second party was involved in multiple criminal activities and for such reason the Police frequently visited the branch office of the first party at Puri, the first party was put to an ambarrassing position and in order to avoid that situation and further taking into consideration the COVID-19 impact, the second party was directed to go on long leave and to settle his dues. It is contended that when the second party did not settle his dues he was repeatedly asked to join at Bhubaneswar over phone, but he did not prefer to join. In such *scenario*, it is argued, the action of the first party cannot be construed as termination of service of the second party and consequently he is not entitled to the relief (s) claimed.

11. At the outset, it is worthwhile to mention here that while in one hand the management relies on Ext. A i.e. the copy of FIR and laid much emphasis on the cross-examination of the second party wherein he has admitted that one complaint was made against him in the Kumbharpada Police Station, Puri in the year 2020 by one Mahendra Senapati, no documentary evidence is placed on record as to if the management on receipt of such information had asked him any explanation/show cause and initiated a departmental proceeding against him prior to issuance of Ext. 3. Rather, it discloses from Ext. 3 that due to the impact of COVID-19 the second party was advised to go on long leave. It is also in the evidence of MW1 in Para. 14 of his cross-examination that no show cause was issued to the second party for his unauthorised absence from duty and no enquiry was conducted for such unauthorised absence before presuming the act of the second party as abandonment of employment. In the above background, the removal of the second party from employment, in my view, has no *nexus* at all with his involvement in the alleged criminal activity as indicated in Ext. A; the reason being that no departmental action was taken against the second party pursuant to Ext. A.

The second party in his pleadings as well as in evidence has categorically stated that he was under the employment of the first party organisation since the 2nd February 2000 and continued to work till the 30th September 2020 but the first party in violation of the provisions of the Act has terminated his service w.e.f. the 1st October 2020. In order to prove his continuous service, the second party had moved a petition on the 29th April 2024 seeking production of records relating to payment of salary/wages/Acquaintance from the possession of Hi-Tech Estates & Promoters Pvt. Ltd. from February 2000 till March 2015 and of the present management for the period from April 2015 to the 28th September 2020 and upon hearing the parties the Tribunal did not incline to pass any order directing the first party to cause production of the documents of M/s Hi-Tech Estate & Promoters Pvt. Ltd. for the period from February 2000 to March 2015; the reason being that M/s Hi-Tech Estate & Promoters Pvt. Ltd. is not a party to the reference and accordingly passed orders to cause production of the documents for the period the second party claims to have worked under the first party till termination of his service i.e. the 1st October 2020. As it reveals from record, the first party field only the salary sheet of the second party for the period from January 2018 to September 2020 and got the same proved through MW 1, which has been marked as Ext. B. The continuous employment of the second party under the first party from the 1st January 2018 to the 1st October 2020 is also found to have been admitted by MW 1 in his cross-examination at Para.13. It is also in his cross-examination that nothing mentioned regarding the period of leave in Ext. 3, nor any written intimation was given to the second party to resume duty after issuance of Ext. 3.

12. On an analysis of the evidence, both oral as well as documentary, as discussed above, the Tribunal is of the view that the second party though not able to establish his engagement under the first party from the 2nd February 2000, yet he has substantiated his continuous employment under the first party for the period from the 1st January 2018 to the 1st October 2020 and thus was entitled to the protection of Section 25-F of the Act. There being admitted non-compliance of the provisions of Section 25-F of the Act by the first party at the time of issuance of Ext. 3, which in my

view is nothing but termination of his employment, the action of the first party cannot be said to be either legal or justified.

Accordingly, Issue No. (iii) is answered in favour of the second party.

13. *Issue No. (iv)*—Now it is to be determined as to what relief the second party is entitled to. As has been held under issue No. (iii), the second party has rendered continuous service under the first party for a period nearing three years and was ousted from employment during a crucial period i.e. COVID-19 and that too without there being sufficient cause and in gross violation of the provisions of the Act. As it reveals from Ext. 1, he is a National Youth Awardee and is now aged about 51 years. So, taking stock of the situation and the fact that owing to his alleged involvement in criminal trial there do not exists a cordial relationship of employer employee between the first party and the second party, an order of reinstatement is not felt to be an appropriate relief in his favour and instead, a monetary compensation in lieu of reinstatement and back wages, in my view, would be adequate to compensate the second party for his suffering. Accordingly, the first party is directed to pay a lump sum compensation of Rs. 3,00,000 (Rupees three lakh) only to the second party within a period of two months of the date of publication of the Award in the Official Gazette, or else the amount of compensation would carry a simple interest of 6% per annum till its realisation from the first party.

Issue No. (iv) is answered accordingly.

Dictated and corrected by me.

BENUDHAR PATRA
19-10-2024
Presiding Officer
Industrial Tribunal, Bhubaneswar

BENUDHAR PATRA
19-10-2024
Presiding Officer
Industrial Tribunal, Bhubaneswar

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By order of the Governor

NIRANJANA JENA

Deputy Secretary to Government

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